JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2014-12-02-08 / NON-PRECEDENTIAL**
ID: **P-14-047-H**
DATE: **DECEMBER 2, 2014**
DISPOSITION: **DENIED**
TAX TYPE: **INCOME**
APPEAL: **NO APPEAL TAKEN**

ORDER

APPLICANT ("Applicant") appears pro se.[1] The Account Maintenance Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY 1, First Deputy General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On April 23, 2014, by facsimile,[2] the Applicant filed the *Application for Hearing* ("*Application*"), with attachments thereto, with the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[3] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[4] On April 24, 2014, the Court Clerk ("Clerk")[5] mailed the Introductory Letter to the Applicant that this matter had been assigned to ALJ, Administrative Law Judge ("ALJ"), and docketed as Case Number P-14-047-H. The letter also advised the Applicant that a Prehearing Teleconference Notice would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[6] On April 24, 2014, the Clerk requested the Division's file. On April 28, 2014, OTC ATTORNEY 2, and OTC ATTORNEY 3, Assistant General Counsel, filed an Entry of Appearance, as Co-Counsel for the Division. On April 29, 2014, the Clerk received the Division's file on the captioned matter. On April 30, 2014, the Clerk mailed the Prehearing

[1] **"[P]ro se"** (proh say *or* see), *adv.* & *adj.* [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed *pro persona*; *in propria persona*; *propria persona*; *pro per*. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (9th ed. 2009), available at http://web2.westlaw.com.

[2] On April 25, 2014, the Clerk received the hard copy of the *Application for Hearing,* with attachments thereto.

[3] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

[4] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[5] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 2009).

[6] *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

Teleconference Notice to the last-known address of the Applicant, setting the Prehearing Teleconference for June 19, 2014, at 10:00 a.m.[7]

On May 29, 2014, the Division filed a *Notice of Substitution of Attorney and Entry of Appearance* with OTC ATTORNEY 1 as Co-Counsel for the Division.[8]

On June 6, 2014, the Division filed a *Response and Brief in Support* ("*Response*"). On June 10, 2014, the Division filed Exhibits A through J. On June 12, 2014, the Applicant filed his *Response to the Oklahoma Tax Commission Compliance Division's Response and Brief in Support* ("*Reply*"). On June 16, 2014, by facsimile, the Applicant filed *Statements for June 19, 2014 Prehearing Teleconference*, with an attachment thereto. On June 19, 2014, the ALJ conducted the Prehearing Teleconference, as scheduled, with the parties. On June 19, 2014, the ALJ confirmed with the parties, the matters discussed during the Prehearing Teleconference, as follows, to-wit:

> Pursuant to the Prehearing Teleconference held this morning at 10:00 a.m., the undersigned discussed the following matters with the parties:
>
> (a) There are no disputed facts in the captioned matter.
> (b) The parties are in agreement that Section 221 of Title 68 does not apply to this matter.
> (c) The ALJ reviewed the court file, and deems the Division's Response and Brief in Support to the Applicant's Application for Hearing, as a "Motion to Dismiss" for lack of jurisdiction, pursuant to OKLA. ADMIN. CODE § 710:1-5-46 (June 11, 2005), a copy of which is attached hereto.
> (d) As there are no disputed facts, this matter shall be set for "Oral Argument" only, which shall be limited to legal arguments, concerning the court's jurisdiction to consider the pending protest. (More specifically, the parties oral argument should consider, but not exclusive of the Requests for Abatement of Tax, Penalty, and Interest for the 2009 Tax Year filed by the [Applicant] and denied by the Commissioners on August 21, 2012, and December 3, 2013, respectively, and Section 219.1(D) of Title 68, a copy of which is also attached hereto).
> (e) By agreement of the parties the Order Setting Date and Time for Oral Argument is attached hereto.

On June 19, 2014, the ALJ issued the *Order Setting Date and Time for Oral Argument* for September 23, 2014, at 9:30 a.m.

---

[7] OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the notice to the Applicant at ADDRESS.

[8] The ALJ deems this filing as a Withdrawal of Counsel for OTC ATTORNEY 3.

On July 10, 2014, the Applicant filed a *Request for Written Summary Decision on Jurisdiction/Request to Cancel Oral Hearing* ("*Request*"). On July 11, 2014, the ALJ acknowledged the filing of the *Request.* The ALJ advised the Division that it could file a response on or before July 25, 2014. On July 16, 2014, the Division filed its *Response to Applicant's Request.* On July 17, 2014, the ALJ issued the *Order Granting [Applicant's] Request to Cancel Oral Argument and Submit on Briefs* ("*Order*"). The ALJ struck the Oral Argument set for September 23, 2014, at 9:30 a.m. and submitted this matter for decision on July 17, 2014.[9] On August 26, 2014, the Division filed the *Corrected Summary of Liability.* The ALJ reopened the record to include the Division's filing, reclosed the record, and resubmitted this matter for decision on August 26, 2014.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the exhibits received into evidence, the briefs, and the Division's *Corrected Summary of Liability,* the undersigned finds:

1. On November 6, 2009, the United States Magistrate Judge for the United States District Court for the Northern District of Oklahoma in Case No. 02-CR-141-HDC (Docket No. 96), issued a Post-Judgment Continuing Writ of Garnishment and Subpoena to the RETIREMENT TRUST ("RETIREMENT TRUST"),[10] as Trustee of the Trust for the EMPLOYER Retirement Plan ("Plan"), and its successors and assigns. The Court directed the Trustee to pay the proceeds of the Applicant's deferred compensation[11] such as pension, profit sharing, 401(k), SEP's, IRA's, and similar plans, to the federal government (Nonexempt Interest). To assist the Garnishee with its obligations under the Writ, the following information was provided,[12] as follows, to-wit:

Defendant's Name:	[Applicant]
Defendant's Last Known Address:	Tulsa, OK 74112
Date of Judgment:	February 20, 2003
Nature of Judgment:	CRIMINAL JUDGMENT[13]

[9] *See* Procedural History herein.

[10] Division's Exhibit C. ORIGINAL COMPANY NAME changed its name to TRUST COMPANY.

[11] *See* OKLA. ADMIN. CODE § 710:90-1-13(d): "Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma Withholding Tax."

[12] Division's Exhibit A.

[13] *See* Division's Exhibit J at 2. "[Applicant] is a former assistant treasurer of EMPLOYER. In 2002, he was charged in this court with 21 counts of wire fraud and one forfeiture count for embezzling money from EMPLOYER. [*United States v. Meadows*, Case No. 2-CR-141-HDC, Dkt. #1]. He plead guilty to three counts of wire

Judgment Amount:	$4,715,359.00
Costs Awarded:	$-0-
Amount of Post-Judgment Interest Accrued to Date:	$.00
Surcharge Under § 3011:	$-0-
Total Amount Still Owing:	$4,285,140.46

2. In response to the Continuing Writ of Garnishment, the Trustee paid $199,835.29 to the Clerk for the U.S. District Court for the Northern District of Oklahoma. The Trustee withheld federal income taxes, but not Oklahoma state income taxes.[14]

3. On or about April 15, 2010, the Applicant filed the Oklahoma Resident Income Tax Return ("Original") for the 2009 Tax Year, which reflects tax due of $63.00.[15]

4. On or about June 30, 2010, the Applicant filed an Oklahoma Amended Resident Individual Income Tax Return ("Amended Return") for the 2009 Tax Year. The Applicant states the reason for the Amended Return as "1. Federal income changed for Pension distribution Form 1099-R."[16] The Amended Return, as filed, reflects $10,991.00 in income tax due.[17]

5. On November 4, 2010, the Tax Commission filed Tax Warrant #ITI201000691300 with County Clerk of Tulsa County, Oklahoma, against the Applicant for the 2009 Tax Year,[18] as follows, to-wit:

Total Tax:	$10,991.00
Interest to date of issuance:	$826.58
Penalties to date of issuance:	$(226.00)
Tax warrant penalty:	$200.00
Filing Fee:	$26.00
Total Amount Due:	$11,817.58

---

fraud and the forfeiture count, and was sentenced to 50 months imprisonment; ordered to forfeit $2,750,000 in cash, various financial accounts, real property and vehicles; and ordered to make restitution of $4,715,359 to EMPLOYER. [*Id.*, Dkt. ##15,26, 29]"

[14] *Id.* [Case No. 13-CV-568-GKF-TLW, Dkt. #13, Ex. 4, 2009 Form 1099-R].

[15] Division's Exhibit D.

[16] Division's Exhibits B and E. Attached to the Amended Return is a copy of the 1099-R issued by the Trustee to the Applicant for $199,835.29.

[17] *Id.*

[18] Division's Exhibit F.

6. On October 29, 2010, the Applicant mailed a letter, with attachments, to the Tax Commission seeking "…an explanation why collection of tax due is directed to ME only, and not my **former employer**, who **failed to withhold** any tax on the pension distribution as reported on Form 1099-R?"[19] (Emphasis original.)

7. On September 4, 2012, the Division mailed a letter to the Applicant stating, "Your application for settlement of tax liability was presented to the Oklahoma Tax Commission at its regularly scheduled meeting on 8/21/12. After full consideration of the relevant facts and the law, the Commission has denied the request."[20]

8. On July 5, 2013, the Applicant submitted a Request for Review to the Office of General Counsel of the denial of his Application for Settlement of Tax Liability, pursuant to Section 221(E) of Title 68.[21]

9. On July 8, 2013, the Office of General Counsel responded to the Applicant's July 5, 2014 letter,[22] as follows, to-wit:

> The Office of the General Counsel has received your letter dated July 3, 2013, requesting review under 68 O.S. § 221(e) by this office of the Oklahoma Tax Commission's ("OTC") rejection of an Application for Settlement of Tax Liability ("Application") submitted by you in July 2012.
>
> The provisions of 68 O.S. § 221(e) are inapplicable to the Application. Section 221(e) applies to a request by a taxpayer to abate taxes *assessed* within one (1) year of the date the assessment was mailed to the taxpayer. A review of your account shows that no assessment was issued by the OTC for the income taxes owed; rather you filed an amended 2009 Oklahoma income tax return reporting the taxes due. (Emphasis Original.)
>
> Your Application was considered and denied by the Commissioners of the OTC on August 21, 2012. The Application was submitted under the provisions of 68 O.S. § 219.1, a copy of which is enclosed. Section 219.1(D) clearly states "[t]he decision of the members of the Tax Commission in denying the abatement

[19] Division's Exhibit G.

[20] *See* Attachments to Division's Exhibit H.

[21] Division's Exhibit H. There are numerous attachments to the Request for Review. OKLA. STAT. tit. 68, § 221(E) (West 2014).

[22] Division's Exhibit I.

> of any tax liability pursuant to this section shall be final and no right of appeal to any court may be taken from such decision." Accordingly, the Commissioners' decision to deny your Application is final.
>
> It is my understanding that you have submitted a new Application for Settlement of Tax Liability which is currently pending. The Account Maintenance Division will present this second application to the Commissioners at a regularly scheduled meeting. …

10. On August 12, 2013, the Applicant, acting as a pro se Plaintiff, sued his former employer, EMPLOYER in the District Court of Tulsa County in Case No. CJ-2013-3738 alleging EMPLOYER wrongfully failed to withhold Oklahoma income taxes from the 2009 distribution of his retirement pension. EMPLOYER removed the case (now Case No. 13-CV-568-GKF-TLW) to federal court. The Applicant filed a Motion to Remand the case. The next day, the Applicant filed another lawsuit in Tulsa County District Court making similar allegations against EMPLOYER and seeking a writ of mandamus compelling the Tax Commission to collect the unpaid state income taxes from EMPLOYER. EMPLOYER removed the second case to federal court [Case No. 13-CV-680-GKF-TLW, Dkt. #2]. The court consolidated the cases under the lower-numbered case and denied the Motion to Remand. In the amended petition for writ of mandamus, the Applicant sought to compel the Tax Commission to collect from EMPLOYER the state income tax the Applicant's claims should have been withheld and remitted from his retirement plan distribution, and a temporary stay against the Tax Commission from collection against him until the matter was settled. In response, the Tax Commission filed a Motion to Dismiss on the basis that the court lacked subject matter jurisdiction.[23]

11. On December 3, 2013, the Commission denied the Applicant's Second Application for Settlement of Tax Liability.[24]

12. On April 7, 2014, the Honorable CHIEF JUDGE, Chief Judge of the United States District Court for the Northern District of Oklahoma issued an Opinion and Order (Case No. 13-CV-568-GKF-TLW), granting EMPLOYER'S and the Tax Commission's Motions to Dismiss. As to EMPLOYER, the court held that "…neither the Tax Code nor implementing regulations contain *any* provision conferring a private right of action by an employee against an employer to enforce an employer's withholding obligation. Therefore, APPLICANT has no cognizable claim against EMPLOYER under Oklahoma income tax laws."[25] The court held that the Applicant's

---

[23] The ALJ is taking judicial notice of the materials contained in the court file to complete the factual details of this matter. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 2013).

[24] *Id.*

[25] Division's Exhibit J. The Court held the Applicant's breach of fiduciary duty claim against EMPLOYER was time-barred.

Amended Petition for Writ of Mandamus "…contravenes Oklahoma's legislatively mandated administrative procedure for protesting a tax, or the collection or enforcement thereof. The procedure requires a hearing before the Oklahoma Tax Commission and a direct appeal to the Oklahoma Supreme Court. Therefore, dismissal for failure to exhaust administrative remedies is appropriate."[26] (Emphasis original.)

13. On April 23, 2014, the Applicant filed his *Application* requesting from the Office of Administrative Law Judges,[27] the following, to-wit:

> …a hearing for the determination how this Applicant, [Applicant], who was aggrieved by actions (or inactions) of the Tax Commission and other parties, how to obtain remedy for the failure to remit income tax from a lump sum pension plan distribution by the employer sponsor, and the failure of the Oklahoma Tax Commission to enforce the withholding and remittance requirement as required by law. The amount of required income tax withholding in question ($9,991.76) has been and still is in the possession of the employer who sponsors the pension plan. [Applicant] requests that the required withholding tax be remitted by the employer and credited towards the tax liability due for year 2009, plus applicable penalties and interest for the failure to remit.

14. On June 19, 2014, the ALJ confirmed the matters discussed with the parties during the Prehearing Teleconference,[28] as follows, to-wit:

> (a) There are no disputed facts in the captioned matter.
> (b) The parties are in agreement that Section 221 of Title 68 does not apply to this matter.
> (c) The ALJ reviewed the court file, and deems the Division's Response and Brief in Support to the Applicant's Application for Hearing, as a "Motion to Dismiss" for lack of jurisdiction, pursuant to OKLA. ADMIN. CODE § 710:1-5-46 (June 11, 2005), a copy of which is attached hereto.
> (d) As there are no disputed facts, this matter shall be set for "Oral Argument" only, which shall be limited to legal arguments, concerning the court's jurisdiction to consider the pending protest.

---

[26] *Id.* (Citations omitted.) The Court held pursuant to the federal Mandamus Act, it lacked jurisdiction to order the Tax Commission to stop collection efforts against the Applicant.

[27] *See* Procedural History herein.

[28] *Id.*

> (More specifically, the parties oral argument should consider, but not exclusive of the Requests for Abatement of Tax, Penalty, and Interest for the 2009 Tax Year filed by the Applicant and denied by the Commissioners on August 21, 2012, and December 3, 2013, respectively, and Section 219.1(D) of Title 68, a copy of which is also attached hereto).
> (e) By agreement of the parties the Order Setting Date and Time for Oral Argument is attached hereto.

15. On July 10, 2014, the Applicant filed a Request for Written Summary Decision on Jurisdiction/Request to Cancel Oral Hearing ("Request").[29]

16. On July 11, 2014, the ALJ advised the parties that the Division could file a response to the Applicant's Request on or before July 25, 2014.[30]

17. On July 16, 2014, the Division filed a Response to the Applicant's Request. The Division did not have any objection to the Request.[31]

18. On July 17, 2014, the ALJ issued an Order Granting [Applicant's] Request to Cancel Oral Argument and Submit Case on Briefs.[32]

19. On August 26, 2014, the Division filed its *Corrected Summary of Liability*,[33] as follows, to-wit:

Total Tax	$10,371.00
Total Interest (as of 8/26/2014)	$ 6,917.89
Tax Warrant filing fee	$ 13.00
Tax Warrant release fee	$ 13.00
Tax Warrant Penalty	$ 200.00
Balance	$17,514.89

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[34]

---

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id*. The Division notes, "The outstanding liability of [Protestant] for tax year 2009, after application of all credits and with interest accrued to date…"

2. 2. The provisions of the "Settlement Agreement" statute,[35] provides in pertinent parts, as follows, to-wit:

> A. In accordance with the provisions of the amendment to Section 5 of Article X of the Oklahoma Constitution as set forth in Senate Joint Resolution No. 32 of the 2nd Session of the 48th Oklahoma Legislature, the Oklahoma Tax Commission is hereby authorized to abate all or any portion of tax liability and interest and penalties accruing thereto, pursuant to a settlement agreement entered into with a Applicant, …
>
> …
>
> D. Any abatement of tax liability authorized by this section shall only be granted by a unanimous vote of the members of the Tax Commission. **The decision of the members of the Tax Commission in denying the abatement of any tax liability pursuant to this section shall[36] be final and no right of appeal to any court may be taken from such decision.** (Emphasis added.)[37]
>
> …
>
> F. The provisions of this section shall not be construed to grant any legal right to any Applicant for the abatement of any tax liability. A decision to grant abatement of tax liability pursuant to the provisions of this section shall be a discretionary act within the authority of the members of the Tax Commission.
>
> …

---

[34] *See* OKLA. ADMIN. CODE § 710:1-5-38 (July 11, 2013). *See also* OKLA. ADMIN. CODE § 710:1-5-46 (June 11, 2005).

[35] OKLA. STAT. ANN. tit. 68, § 219.1 (West 2014).

[36] Generally, when the legislature uses the term "shall," it signifies a mandatory directive or command. *See Keating v. Edmondson*, 2001 OK 110, 37 P.3d 882.

[37] *See* OKLA. ADMIN. CODE § 710:1-5-86(e) (June 25, 2006):

> **No appeal of denial.** The decision by the Commission to decline a proposed Settlement Agreement is final and is not appealable.

3. The goal of any inquiry into the meaning of a legislative act is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. Hence, where a statute is plain and unambiguous, it will not be subject to judicial construction, but will be given the effect its language dictates. Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be employed.[38]

DISCUSSION

In this matter, there are no disputed facts and the parties agree that Section 221 of Title 68[39] does not apply.[40] In particular, there is no dispute that the Commissioners have denied two (2) Applications for Settlement of Tax Liability on August 21, 2012 and December 3, 2013, respectively.[41] The language of Section 219.1(D) of Title 68 is clear and unambiguous,[42] "The decision of the members of the Tax Commission in denying the abatement of any tax liability pursuant to this section shall be final and no right of appeal to any court may be taken from such decision."[43]

CONCLUSION

The ALJ does not have the jurisdiction to consider the Applicant's *Application for Hearing.*

ORDER

---

[38] *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n,* 2003 OK 50, ¶ 14, 75 P.3d 883. (Citations omitted).

[39] *See* Note 21, *supra.*

[40] *See* Note 28, *supra.*

[41] *See* Notes 20 and 24, *supra.* In the copy of the Application for Settlement of Tax Liability the Commissioners denied on December 3, 2013, the Applicant states in pertinent part, "I owe my former employer, EMPLOYER money. Through a court ordered garnishment, the value of retirement benefit I had coming in my pension plan was distributed in year 2009, directly to my former employer as a payback. I never received any of the money directly to me. I was issued a Form 1099-R reporting the distribution as income. No tax was withheld for Oklahoma income tax due, which is technically required under state statute. …"

[42] *See* Note 38, *supra.*

[43] *See* Note 35, *supra.*

The OTC ORDERS dismissal of the Applicant's *Application*, as more fully set forth herein.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."